

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:17-CV-00168-WJM-NYW

UNITED STATES OF AMERICA,

Plaintiff/Counterclaim Defendant,

v.

PIONEER NATURAL RESOURCES COMPANY
and PIONEER NATURAL RESOURCES USA, INC.,

Defendants/Counterclaim Plaintiffs.

CONSENT DECREE

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I. BACKGROUND

Site Background

A. This Consent Decree involves the United States of America (“United States”) and Pioneer Natural Resources Company and Pioneer Natural Resources USA, Inc. (collectively, “Settling Defendants”) and the settlement of claims relating to the cost of environmental cleanup at the Nelson Tunnel/Commodore Waste Rock NPL Site (“Site”). The Site is located in the San Juan Mountains about 1.5 miles north of the statutory town of Creede in Mineral County, Colorado. *See Appendix A*. The Site encompasses part of the historic Creede Mining District where silver ore was mined for over a century within a complex underground system built along the Amethyst Vein. *Id.*

B. On September 3, 2008, the Site was placed on the National Priorities List (“NPL”), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. *See* 73 Fed. Reg. 51,368 (Sept. 3, 2008). The NPL is a statutory mechanism for identifying sites on the basis of potential hazard, for the purpose of determining priorities for Superfund-financed cleanup. To manage the environmental cleanup at the Site, EPA designated two operable units: the Commodore Waste Rock Pile – Operable Unit 1 and the Nelson-Wooster-Humphreys Tunnel (“Nelson Tunnel”) – Operable Unit 2. *Id.*

C. Operable Unit 1 – Commodore Waste Rock Pile. The Commodore Waste Rock Pile (“CWRP”), Operable Unit 1 (“OU1”) of the Site, is a waste rock pile located in the West Willow Creek drainage near the portals of two adits commonly referred to as the Nelson Tunnel and the Commodore No. 5. The Commodore No. 5 is located above the Nelson Tunnel. Various mining operations and exploratory activities from the 1890s through the 1980s contributed to the formation of the existing CWRP. The CWRP was initially formed when waste rock from

excavation of the Nelson Tunnel and the Commodore No. 5 was deposited into the West Willow Creek drainage. Over time, mining companies that operated at the Site installed crib walls to retain the CWRP waste rock material and also constructed a water conveyance system to convey West Willow Creek over and eventually through the CWRP.

D. Pioneer Nuclear Inc., Mesa Limited Partnership, and Mesa Operating Limited Partnership (collectively “Predecessor Entities”) conducted operations at OU1 of the Site from 1983-1989, which the United States alleges included the disposal of waste rock from underground mine exploration and development work within the Commodore No. 5 tunnel onto the CWRP and the redistribution of existing waste rock on the CWRP.

E. Settling Defendants assert that Predecessor Entities exploratory activities within the Commodore No. 5 were limited in time and any generated waste rock from those activities was also limited in volume. Therefore, Settling Defendants assert that any alleged environmental harm from disposal activities on the CWRP is minimal and should be apportioned.

F. In 2005, high water flows in West Willow Creek washed out the main framework of the water conveyance system and large portions of the CWRP were eroded into West Willow Creek.

G. Operable Unit 2 – Nelson Tunnel. The Nelson Tunnel, Operable Unit 2 of the Site, is the lowest constructed tunnel within the mining complex constructed along the Amethyst Vein (hereinafter, “Commodore Mining Complex”) located within Bachelor Mountain. The Nelson Tunnel’s collapsed portal is located near West Willow Creek. Construction of the Nelson Tunnel began in 1892 and it was expanded in phases by different mining companies until the early 1900s, reaching an estimated length of over 9,000 feet. The Nelson Tunnel was constructed

for the purpose of locating ore, haulage and dewatering mines. The Nelson Tunnel is abandoned and partially collapsed. The portal of the Nelson Tunnel is currently located on land owned by the United States. The Nelson Tunnel is known to have three natural water impoundments that contain acid mine drainage. The acid mine drainage discharges through the Nelson Tunnel adit and into West Willow Creek.

H. The Commodore Mining Complex includes nearly 3 continuous miles of the Amethyst Vein that were historically worked by various mines. These mines are now abandoned, but were formerly operated by various mining companies that sunk workings and developed staged operation levels along the Amethyst Vein. Most shafts that sunk workings along the Amethyst Vein system were eventually joined through the Nelson Tunnel and overlying the Commodore No. 5 level. The Nelson Tunnel functions as a drain for water entering the underground workings of these mines. A limited amount of surface water is suspected or known to be entering mine shafts at various locations. The sources of water that ultimately discharge from the collapsed Nelson Tunnel portal are thought to be from both deep groundwater upwelling into the Nelson Tunnel workings and from surface precipitation that infiltrates down into mine shafts, mine workings, and veins at various locations. There is uncertainty in the precise contribution from various sources, however, the surface precipitation may account for only a minor portion of the discharge observed at the Nelson Tunnel portal.

I. The Commodore Mining Complex includes the Commodore No. 5 and the Amethyst No. 5 levels. The Commodore No. 5 level is located above the Nelson Tunnel at the South end of the Amethyst Vein within the Commodore Mining Complex and the Amethyst No. 5 level is located above the Commodore No. 5 level towards the middle of the Amethyst Vein

within the Commodore Mining Complex. The Commodore No. 5 and Amethyst No. 5 levels were used by different mining companies for exploration, mining, and haulage of waste rock and ore. The Commodore No. 5 and Amethyst No. 5 tunnel workings may drain into the Nelson Tunnel.

J. The United States asserts that Predecessor Entities conducted underground operations within the Commodore No. 5 level and Amethyst No. 5 level, from 1982 - 1989, which the United States asserts included mining, drifting, and drilling. The United States asserts that it is possible these underground operations contributed to the creation of pathways within the Commodore Mine Complex that may have connected with or otherwise drained into the Nelson Tunnel, Operable Unit 2 of the Site. If such pathways were created, the United States asserts that it is possible the pathways have and continue to contribute to the acid mine drainage that is eventually discharged into West Willow Creek.

K. Settling Defendants assert that Predecessor Entities' underground operations within the Commodore No. 5 level and Amethyst No. 5 level, including mining, drifting, and drilling, were completed by 1984. Settling Defendants also assert that the Predecessor Entities conducted no exploratory activities or other operations in the Nelson Tunnel. Settling Defendants further assert that Predecessor Entities' exploratory activities in the Commodore No. 5 level were limited in time and scope and did not create any known hydrological connection to the Nelson Tunnel. Settling Defendants also assert that Predecessor Entities' exploratory activities within the Amethyst No. 5 level were limited in time and scope and did not create any known hydrological connection to the Nelson Tunnel. Consequently, Settling Defendants assert that it is unlikely the Predecessor Entities' limited exploratory activities in the Commodore No. 5 or

Amethyst No. 5 levels caused or contributed to the creation of any pathways connecting mines to the Nelson Tunnel or otherwise draining into the Nelson Tunnel. All of the Predecessor Entities' operations at the CWRP and the Site ended in 1989.

L. Site Investigations and Response Actions. In approximately 1994, the EPA began investigating the Site at the request of the State of Colorado. In 2008 and 2009, EPA conducted a removal action at OU1 that included the construction of a clean channel to convey West Willow Creek around the CWRP as well as reconfiguration of the remaining CWRP for purposes of stabilization. Future response actions related to OU1 have been contemplated and may include the construction of a cap to address potential leaching of acid generating materials from the CWRP. EPA's estimated future response costs associated with this possible future response action - construction of a cap- are \$1,125,000, inclusive of 50 years of operation and maintenance. However, no final decisions on future activities at OU1 have been made by EPA at this time.

M. In November 2011, EPA completed a final Remedial Investigation report on the nature and extent of mining-related contamination in surface water, mine pool water, and waste rock material at both OU1 and OU2 of the Site. In April 2019, EPA issued a Remedial Investigation Addendum. The Remedial Investigation Addendum further documents certain consolidated findings from additional water quality sampling and other data collection events since the 2011 Remedial Investigation report.

N. On May 24, 2018, EPA approved a time critical removal action at the Site (hereinafter, "2018 TCRA") for the purpose of stabilizing sections of the Commodore No. 5 tunnel and certain vertical connections to the Nelson Tunnel in an effort to reduce the risk of an

increased water impoundment hazard in the Nelson Tunnel and the likelihood of an uncontrolled release. On October 30, 2019, EPA approved an amendment to the 2018 TCRA that revised certain cost estimates and work to be completed. Revised estimated costs for the 2018 TCRA are \$7,140,000. The 2018 TCRA is ongoing. The initial EPA completion date estimated for the 2018 TCRA is Spring 2021. This estimated completion date is subject to change.

O. EPA is following the process provided in the National Contingency Plan, 40 C.F.R. Part 300, to select the final remedial action to be completed at OU2. The national goal of the remedy selection process under the NCP is to select remedies that are protective of human health and the environment, that maintain protection over time, and that minimize untreated waste. *See* 40 C.F.R. § 300.430(a)(1)(i). The NCP defines six major phases in the remedial process: remedial investigation, feasibility study, selection of remedy, remedial design, remedial action, and long term operation and maintenance (including site closeout and deletion). *See* 40 C.F.R. §§ 300.430 and 300.435.

P. EPA has not selected a final remedy for OU2 at the Site. EPA is currently at the feasibility study phase for OU2, where the development, screening, and detailed evaluation of alternative remedial actions occur. EPA is proceeding in a concurrent manner with the feasibility study and time critical removal action. As a part of the feasibility study, EPA is contemplating a water treatment facility as a potential OU2 remedy. Preliminary EPA future cost estimates for an OU2 remedy involving a water treatment facility may be up to \$83,200,000. This preliminary cost estimate includes future interim and final remedy work, as well as 50 years of operation and maintenance. EPA currently estimates that an additional nine to 10 years may be required to fully

implement the selected final remedy at OU2, then long term operation and maintenance would follow.

Q. EPA has partially funded the 2018 TCRA and intends to fund future response actions associated with OU1 and OU2 through various sources, including funds obtained from Site enforcement actions, federal appropriations from the Hazardous Substance Superfund, 10% remedial action cost share from the State of Colorado, and funding provided through current and future Interagency Agreement(s) entered into between EPA and the United States Forest Service to support response work at the Site. Long term operation and maintenance of the final remedy will be funded in accordance with CERCLA and the NCP. *See* 42 U.S.C. 9604(c)(3)(A) and 40 C.F.R. § 300.510(c)(1).

Litigation Background

R. On January 19, 2017, the United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a Complaint against Pioneer Natural Resources Company and Pioneer Natural Resources USA, Inc. (collectively, “Settling Defendants”) under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at OU1 of the Site. The Complaint also seeks a declaration of liability against Settling Defendants that would be binding in future actions to recover response costs or damages by the United States related to OU1 of the Site. *See* 42 U.S.C. § 113(g)(2). The United States filed the Complaint after an unsuccessful effort to resolve its claim through mediation. The Complaint did not allege claims related to OU2 of the Site.

S. Settling Defendants also filed counterclaims against the United States alleging that the United States is liable under Section 107 and Section 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, as both an owner of OUI at the time that hazardous substances were disposed of at OUI and as a current owner of OUI. Settling Defendants in their counterclaims seek a judgment against the United States for the United States' equitable share of costs incurred and that may, in the future, be incurred as the result of the release or threatened release of hazardous substances at OUI.

T. For over two years, the Parties have engaged in extensive litigation, fact and expert discovery was completed, and the Parties fully briefed motions for partial summary judgment on many remaining issues in the case concerning CERCLA liability. A stay in the proceedings was then granted and the Parties were able to subsequently reach a settlement. The settlement and subsequently proposed Consent Decree is the culmination of over five years of negotiations and mediation efforts, both before the Complaint was filed and during the litigation.

U. The United States lodged a proposed Consent Decree in November 2019, which reflects the terms of the settlement agreement reached. The United States published notice of the Consent Decree in the Federal Register and after a 30-day public comment period, during which one comment was received and all points raised in the comment were carefully considered by the United States, the United States filed a motion with the Court supporting entry of the proposed Consent Decree. On April 7, 2020, the Court denied entry of the Consent Decree. Upon careful review of the Court's Order, the Parties reached agreement on this Consent Decree, which provides additional context for the terms of the settlement.

V. It is acknowledged for the purpose of this Consent Decree that Settling Defendants are the corporate successors to Predecessor Entities with respect to the United States' Complaint filed in this matter and the alleged CERCLA liabilities concerning the Predecessor Entities' ownership or operation of the Site during the period 1982-1989.

W. Settling Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint or in Section I of this Consent Decree. Settling Federal Agencies (defined *infra*) do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants or in Section I of this Consent Decree.

X. This Consent Decree resolves federal claims under CERCLA against the Settling Defendants for Past and Future Response Costs in connection with the Site. This resolves all claims associated with OU1 and OU2. This Consent Decree also resolves federal CERCLA claims against the Settling Federal Agencies for Past and Future Response Costs in connection with OU1, and Past Response Costs in connection with OU2. This Consent Decree does not resolve federal claims against the Settling Federal Agencies for future response actions involving OU2.

Y. To expeditiously implement necessary future response actions at OU2, EPA and the United States Forest Service plan to address releases and threats of releases of hazardous substances into the environment through the coordinated exercise of the agencies' respective CERCLA authorities. EPA and the Forest Service have entered into a Memorandum of Understanding and Interagency Agreement for the purposes of implementing the CERCLA

response action(s) at OU2 and apportioning Future Response Costs to be incurred by EPA and the Forest Service in connection with the CERCLA response action(s) at OU2.

Z. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any further admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other

legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Forest Service” shall mean the United States Forest Service and its Successor departments, agencies, or instrumentalities.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that EPA or DOJ on behalf of EPA, has incurred or will incur in connection with the Site (defined *infra*) after March 31, 2017.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Nelson Tunnel Remedial Action Special Account” shall mean the Nelson Tunnel Remedial Action Special Account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), to fund future remedial actions at or in connection with the Site.

“Nelson Tunnel Special Account” shall mean the Nelson Tunnel/Commodore Waste Rock special account, within the EPA Hazardous Substance Superfund, established for the Site

by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), to fund future response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

“Operable Unit 1” or “OU1” shall mean Operable Unit 1 of the Nelson Tunnel/Commodore Waste Rock NPL Site, which includes the Commodore Waste Rock Pile that is located in the West Willow Creek drainage adjacent to the portals of two adits named the Nelson Tunnel and the Commodore No. 5 tunnel and is generally shown on the map in Appendix A. Operable Unit 1 was the subject of an EPA Time Critical Removal Action (approved August 13, 2008).

“Operable Unit 2” or “OU2” shall mean Operable Unit 2 of the Nelson Tunnel/Commodore Waste Rock NPL Site, which includes the Nelson Tunnel adit and greater Nelson-Wooster-Humphries Tunnel, and is generally shown on the map in Appendix A.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 31, 2017, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Pioneer Natural Resources Company and Pioneer Natural Resources USA, Inc., as the corporate successors to Pioneer Nuclear Inc., Mesa Limited Partnership, and Mesa Operating Limited Partnership.

“Settling Federal Agencies” shall mean the United States Department of Interior and the United States Department of Agriculture, on behalf of the United States Forest Service, and their successor departments, agencies, or instrumentalities.

“Site” shall mean the Nelson Tunnel/Commodore Waste Rock NPL Site, which was placed on the National Priorities List on September 3, 2008, see 42 U.S.C. § 9605 and 73 Fed. Reg. 51,368 (Sept. 3, 2008), and includes OU1 and OU2. The Site is located in the San Juan Mountains about 1.5 miles north of the statutory town of Creede in Mineral County, Colorado, and generally shown on the map included in Appendix A.

“State” shall mean the State of Colorado.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agencies.

V. PAYMENT OF RESPONSE COSTS

4. Payment by Settling Defendants for Past Response Costs. Within 30 days after the Effective Date, Settling Defendants shall pay to EPA \$5,775,000. In the event that payment is not made within 30 days after the Effective Date, Settling Defendants shall pay Interest on the unpaid balance in accordance with Paragraph 9 (Interest on Late Payments).

5. Settling Defendants shall make payment at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of

Colorado after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jefferson Rees, Vice President Domestic Law and Litigation
 5205 N. O'Connor Blvd., Suite 200 Irving, Texas 75039
 Phone: 972-969-4040
 Email: Jeff.Rees@pxd.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XII (Notices and Submissions).

6. **Deposit of Payment.** \$5,277,500 of the total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the Nelson Tunnel Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. \$497,500 of the total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the Nelson Tunnel Remedial Action Special Account.

7. **Notice of Payment.** At the time of payment, Settling Defendants shall send notice that payment has been made: (a) to EPA in accordance with Section XII (Notices and Submissions); (b) to DOJ by email or by mail in accordance with Section XII (Notices and Submissions); and (c) to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Center
 26 W. Martin Luther King Drive
 Cincinnati, Ohio 45268

Such notice shall reference the CDCS Number, Site/Spill ID Number 08MB, and DJ Number 90-11-3-10841/1.

8. **Payments by Settling Federal Agencies.**

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay to EPA \$425,000. The total amount to be paid on behalf of Settling Federal Agencies pursuant to this Paragraph shall be deposited by EPA in the Nelson Tunnel Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

b. **Interest.** In the event that any payment required by Paragraph 8.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay Interest on the unpaid balance, with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

c. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

9. **Interest on Late Payments.** If any Settling Defendant fails to make any payment under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) by the required

due date, Interest shall accrue on the unpaid balance starting from the Effective Date through the date of payment.

10. **Stipulated Penalty.**

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 9 (Interest on Late Payments), \$500 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as “stipulated penalties” and shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read
“D 68010727 Environmental Protection Agency”

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ as provided in Paragraph 7 (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall

prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

14. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

15. **Covenants for Settling Defendants by United States.** Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), to recover Past Response Costs and

Future Response Costs incurred by the United States in connection with the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

16. **Covenants for Settling Federal Agencies by EPA.** Except as specifically provided in Section VIII (Reservation of Rights by United States), EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9607 and 9607(a), to recover Past Response Costs and Future Response Costs in connection with OU1 at the Site. EPA further covenants not to take administrative action against Settling Federal Agencies pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs in connection with OU2 at the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to Settling Federal Agencies and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

17. **General Reservations of Rights.** The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 15 (Covenants for Settling Defendants by United States). EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies with respect to all matters not expressly included within Paragraph 16 (Covenant for Settling Federal Agencies by EPA). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights

against Settling Defendants, and EPA and the federal natural resource trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to:

- a. liability for failure of Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- b. liability based on the ownership or operation of the Site by Settling Defendants when such ownership or operation commences after signature of this Consent Decree by Settling Defendants;
- c. liability based on Settling Defendants' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendants;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

18. Reservations of Rights Relating to OU2. EPA reserves, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies relating to future response actions at OU2.

IX. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

19. Covenants by Settling Defendants. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or

employees, with respect to Past Response Costs and Future Response Costs incurred in connection with the Site and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Colorado, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or
- c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding Past Response Costs and Future Response Costs and this Consent Decree.

20. **Covenant by Settling Federal Agencies.** Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112, or 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law with respect to Past Response Costs and Future Response Costs incurred in connection with OU1 at the Site, Past Response Costs incurred in connection with OU2 at the Site, and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under NCP.

21. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22. **Waiver of Claims by Settling Defendants.**

a. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have:

(1) De Micromis Waiver. For all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

(2) De Minimis/Ability to Pay Waiver. For response costs relating to the Site against any person that has entered or in the future enters into a final CERCLA § 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site.

b. Exceptions to Waivers. The waivers under this Paragraph 22 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of

action relating to the Site against such Settling Defendant. The waivers under this Paragraph 22 shall also not apply to claims seeking contractual indemnity that Settling Defendants may have against third parties.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

23. Except as provided in Paragraph 22 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants by Settling Defendants and Settling Federal Agencies), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

24. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are:

(a) Settling Defendants' alleged liability for Past Response Costs and Future Response Costs incurred or to be incurred in connection with the Site; and (b) Settling Federal Agencies' alleged liability for Past Response Costs and Future Response Costs incurred or to be incurred in connection with OU1 of the Site and Past Response Costs incurred in connection with OU2 of the Site.

25. The Parties further agree, and by entering this Consent Decree this Court finds, that the Complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant and each Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

26. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. This 60-day notice shall not apply to any suit or claim concerning third party contractual indemnification matters, unless otherwise provided by law. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

27. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants and, with respect to a State action, Settling Federal Agencies shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

XI. RETENTION OF RECORDS

28. Until 10 years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, as well as all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

29. At the conclusion of the record retention period, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 30 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

30. Privileged and Protected Claims.

a. Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 30.b, and except as provided in Paragraph 30.c.

b. If Settling Defendants assert a claim of privilege or protection, they shall provide the United States with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Settling Defendants shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants' favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

31. **Business Confidential Claims.** Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section (Retention of Records) is business confidential

to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

32. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

33. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA and State requests for information regarding the Site

pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e) (3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

34. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eesdcopy.enrd@usdoj.gov
Re: DJ# 90-11-3-10841/1

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10841/1

and: Chief
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-6-21178

As to EPA: Erin Agee
Senior Assistant Regional Counsel
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202
agee.erin@epa.gov

As to the Forest Service: Michael Hope
Senior Counsel
U.S.D.A. Office of the General Counsel
1617 Cole Blvd.
Lakewood, CO 80401
Michael.hope@usda.gov

As to Settling Defendants: Pioneer Natural Resources USA, Inc.
5205 N. O'Conner Blvd., Suite 200
Attention: General Counsel
Irving, TX 75039
jeff.rees@pxd.com

XIII. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

37. This Consent Decree and its appendices constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site; and "Appendix B" is the March 31, 2017 EPA Site Cost Report.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

39. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

40. Each undersigned representative of a Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

42. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVII. FINAL JUDGMENT

43. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 29 DAY OF June, 2021.


The Honorable William J. Martinez
United States District Judge

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR THE UNITED STATES OF AMERICA:

9/8/20
Dated

s/ *Nathaniel Douglas*
NATHANIEL DOUGLAS
Deputy Chief
U.S. Department of Justice
Environment and Natural Resources
Division P.O. Box 7611
Washington, D.C. 20530/20044-7611

s/ *Stacy D. Coleman*
STACY D. COLEMAN
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources
Division Environmental Enforcement
Section
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
stacy.coleman@usdoj.gov
T: (303) 844-7240

THOMAS P. KOLKIN
NICHOLAS MORALES
Trial Attorneys
U.S. Department of Justice
Environment and Natural Resources
Division Environmental Enforcement
Section
P.O. Box 7611
Washington, D.C. 20044-7611
thomas.kolkin@usdoj.gov
nicholas.morales@usdoj.gov
T: (202) 305-0427
T: (202) 616-8860

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR THE UNITED STATES OF AMERICA:

Dated: September 8, 2020

LETITIA GRISHAW
Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice

/s/ Alan D. Greenberg

ALAN GREENBERG
Senior Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
alan.greenberg@usdoj.gov
T: (303) 844-1366

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dated

s/
BETSY SMIDINGER
Digitally signed by BETSY
SMIDINGER
Date: 2020.08.24
16:51:21 -06'00'

BETSY SMIDINGER
Director
Superfund and
Emergency Management Division
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

s/
ELYANA
SUTIN
Digitally signed by
ELYANA SUTIN
Date: 2020.08.25
07:31:24 -06'00'

KENNETH C. SCHEFSKI
Regional Counsel
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

s/
ERIN AGEE
Digitally signed by ERIN
AGEE
Date: 2020.08.24
17:18:56 -06'00'

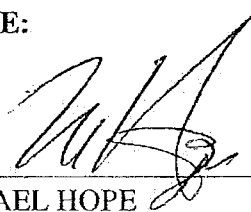
ERIN AGEE
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202
agee.erin@epa.gov

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR THE UNITED STATES FOREST SERVICE:

8/19/20

Dated



MICHAEL HOPE
Senior Counsel
U.S.D.A. Office of the General Counsel
1617 Cole Blvd.
Lakewood, CO 80401
michael.hope@usda.gov

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR PIONEER NATURAL RESOURCES COMPANY, INC.:

Dec 26, 2020
Dated



Name (print): JEFFERSON REES
Title: Vice President, Domestic Law
Address:

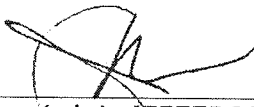
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jeff Rees
Title: V.P. Domestic Law
Address: 6804 Dwyer Ln
Phone: Cell 7603412
Email: 760341; jeff.rees@pnc.com

Signature Page for Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

FOR PIONEER NATURAL RESOURCES USA, INC.:

AUG 22, 2020
Dated

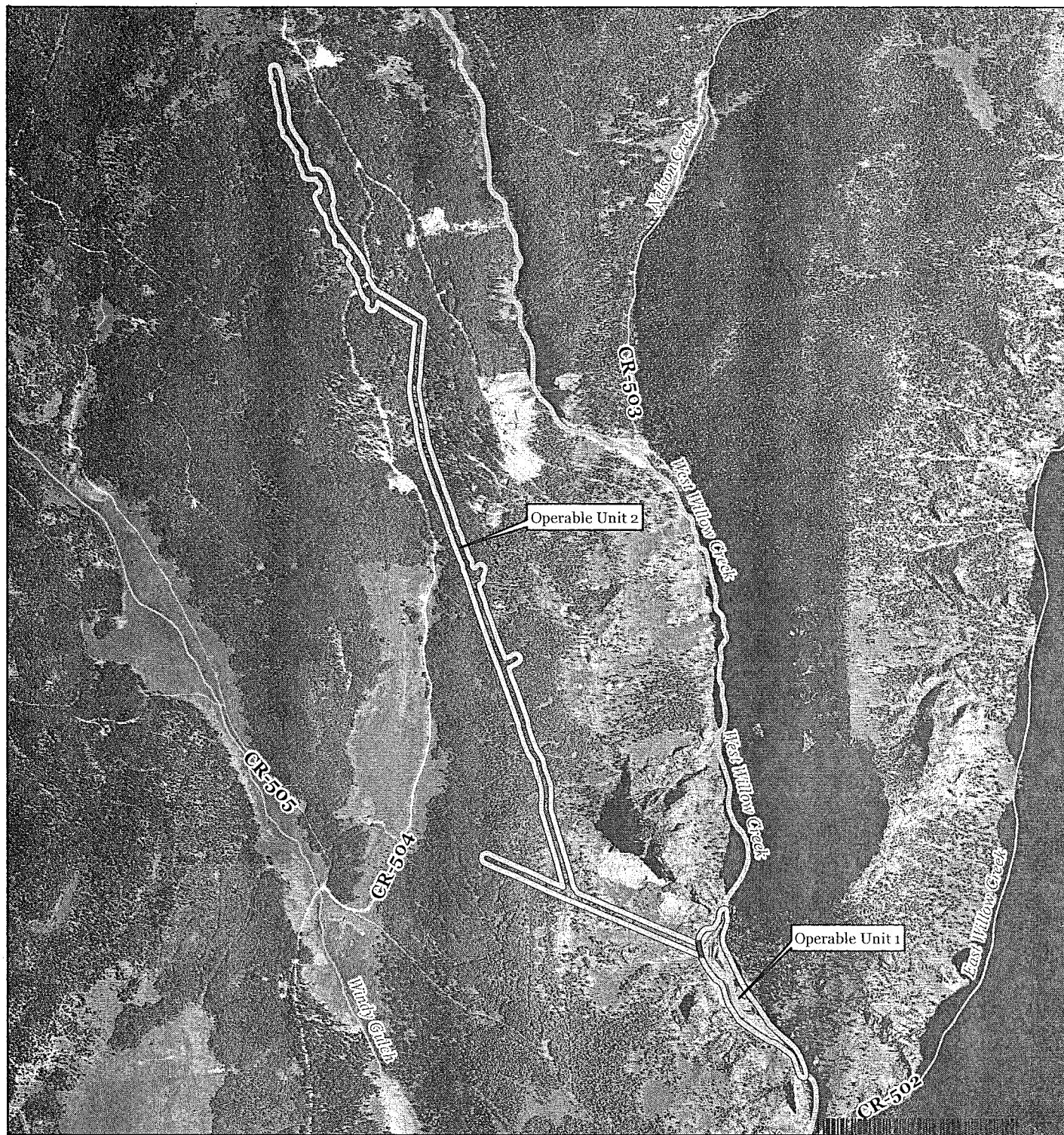

Name (print): JEFFERSON REES
Title: Vice President, Domestic Law
Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jefferson Rees
Title: VP Domestic Law
Address: 666 Hilda Ridge Rd. N. Suite 100
Phone: 214-592-2638
Email: jeff.rees@pnr.com

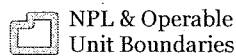
Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

Appendix A



Nelson Tunnel/Commodore Waste Rock NPL Site
Operable Units
 Mineral County, Colorado

1846238
 Colorado



NPL & Operable
 Unit Boundaries



OU Boundary



River

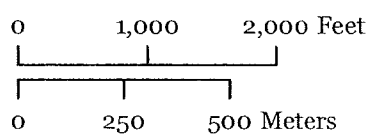
*ICs do not exist for this site

Map Date: April 16, 2012

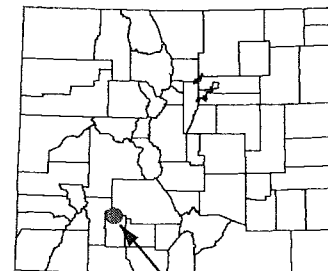
Map Projection: UTM, Meters, 13 North, NAD83

Data Sources: Boundaries - U.S. EPA Region 8 (2012);

Imagery - USDA NAIP 1-meter aerial photo (2009).



EPA



Area Enlarged

*Boundaries are based on the nature and extent of contamination and are subject to change.

Consent Decree Regarding Nelson Tunnel/Commodore Waste Rock NPL Site

Appendix B

Report Date: 05/09/2017

Section 1 - Page 1 of 2

Certified By Financial Management Office

Itemized Cost Summary

NELSON TUNNEL, CREEDE, CO SITE ID = 08 MB

FULL COST SUMMARY REPORT - ALL INCLUSIVE - CRP#'s 169860,177897, 179415, 179419,
180177, 180594, 181060 and 181856
COSTS FROM 10/01/1980 THROUGH 03/31/2017

REGIONAL PAYROLL COSTS.....	\$894,390.50
HEADQUARTERS PAYROLL COSTS.....	\$4,641.67
REGIONAL TRAVEL COSTS.....	\$35,538.01
HEADQUARTERS TRAVEL COSTS.....	\$554.67
ALLOCATION TRANSFER IAG'S	
AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY (ATSDR2009).....	\$20,538.54
AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY (ATSDR2010).....	\$102.47
AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY (ATSDR2011).....	\$275.00
AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY (ATSDR2012).....	\$17,335.37
AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY (ATSDR2013).....	\$6,217.92
EMERGENCY REMOVAL CLEANUP (ERC)	
ENVIRONMENTAL RESTORATION LLC (68-W0-7052).....	\$3,328,489.84
ENFORCEMENT SUPPORT SERVICES (ESS)	
TOEROEK ASSOC. INC. (EPR80910).....	\$230,352.99
INDUSTRIAL ECONOMICS INC (EPW06092).....	\$19,146.02
TOEROEK ASSOCIATE INC (GSF0221P).....	\$94,195.82
ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (EST)	
TECHLAW INC. (EPW06033).....	\$404,366.39
TECHLAW, INC. (EPW13028).....	\$484,891.95
INTERAGENCY AGREEMENT (IAG)	
DEPARTMENT OF INTERIOR (DW14953883).....	\$16,385.56
DEPARTMENT OF JUSTICE (DW15923439).....	\$310,071.56
OTHER	
ASRC MANAGEMENT SERVICES (EPR80604).....	\$117.21
RESPONSE ACTION 2	
HENNINGTON, DURHAM & RICHARDSON, PC (EPW09009).....	\$756,444.40
STATE COOPERATIVE AGREEMENT (SCA)	
PUBLIC HEALTH AND ENVIRON., COLORADO DEPART OF (V96827301).....	\$148,802.33
COLO DEPT OF PUB HLTH/ENV (V97840101).....	\$545,930.82
SUPERFUND TECHNICAL ASSIST RESPONSE (ST3)	
URS OPERATING SERVICES INC. (68-W0-5050).....	\$330,996.33

Report Date: 05/09/2017

Section 1 - Page 2 of 2

Certified By Financial Management Office

Itemized Cost Summary

NELSON TUNNEL, CREEDE, CO SITE ID = 08 MB

FULL COST SUMMARY REPORT - ALL INCLUSIVE - CRP#'s 169860, 177897, 179415, 179419,
180177, 180594, 181060 and 181856

COSTS FROM 10/01/1980 THROUGH 03/31/2017

SUPERFUND TECHNICAL ASSIST RESPONSE TEAM (STR)

WESTON SOLUTIONS, INC. (EPS81301)..... \$4,670.79

TECHNICAL SUPPORT AND SITE EVALUATION PROGRAM (TSS)

DYNCORP SYSTEMS & SOLUTIONS (68-W0-3016)..... \$18,221.23

CRAIG AND DENISE BYINGTON (EPS81110)..... \$8,220.00

ASRC MANAGEMENT SERVICES, INC (EPW05052)..... \$4,004.98

COMPUTER SCIENCES CORP (EPW06046)..... \$4,435.45

PRIMUS SOLUTIONS INC. (EPW11024)..... \$19,573.16

CONTRACT LAB PROGRAM

FINANCIAL COST SUMMARY REPORT FOR CLP..... \$88,020.33

MISCELLANEOUS EXPENSES (MIS)..... \$29,477.36**EPA INDIRECT COSTS..... \$3,772,788.56****Total Site Costs: \$11,599,197.23**